

**KINETIC CONCEPTS, INC., §
KCI LICENSING, INC., KCI USA, INC., §
and §
WAKE FOREST UNIVERSITY §
HEALTH SCIENCES §**

CASE NO. 1:08-CV-00918

**CONVATEC INC.,
BOEHRINGER WOUND
SYSTEMS, LLC, and BOEHRINGER
TECHNOLOGIES, LP**

Defendants.

Plaintiffs Kinetic Concepts, Inc., KCI Licensing, Inc., KCI USA, Inc. (collectively, “KCI”), and Wake Forest University Health Sciences (individually, “Wake Forest” and collectively with KCI, “Plaintiffs”) file this Complaint for injunctive relief and damages against Convatec Inc. (“Convatec”), Boehringer Wound Systems, LLC and Boehringer Technologies, L.P. (collectively “Boehringer” and collectively with Convatec, “Defendants”). In support of this Complaint, Plaintiffs allege as follows:

1. Plaintiff Kinetic Concepts, Inc. is a corporation organized under the laws of the State of Texas, having its principal place of business at 8023 Vantage Drive, San

Antonio, Texas 78230. Kinetic Concepts, Inc. is a global medical technology company with leadership positions in advanced wound care and therapeutic surfaces.

2. Plaintiff KCI USA, Inc. is a corporation organized under the laws of the State of Delaware having its principal place of business at 8023 Vantage Drive, San Antonio, Texas 78230. KCI USA, Inc. is a wholly owned subsidiary of Kinetic Concepts, Inc.

3. Plaintiff KCI Licensing, Inc. is a corporation organized under the laws of the State of Delaware having its principal place of business at 8023 Vantage Drive, San Antonio, Texas 78230. KCI Licensing, Inc. is a wholly owned subsidiary of Kinetic Concepts, Inc.

4. Plaintiff Wake Forest is a non-profit corporation organized under the laws of the State of North Carolina having its principal place of business at Medical Center Boulevard, Winston-Salem, North Carolina 27157-1023. Wake Forest is a wholly-controlled subsidiary of Wake Forest University.

5. Defendant Convatec Inc. (“Convatec”) is a Delaware corporation, with its principal place of business in Skillman, New Jersey. Convatec may be served with process by serving its registered agent, The Corporation Trust Company, at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

6. Defendant Boehringer Wound Systems, LLC is a corporation organized under the laws of the State of Pennsylvania, having its principal place of business at 500 E. Washington St., Norristown PA 19404. Boehringer Wound Systems, LLC may be

served with process at its registered office address at 500 E. Washington St., Norristown PA 19404.

7. Defendant Boehringer Technologies, L.P. is a limited partnership organized under the laws of the State of Pennsylvania, having its principal place of business at 500 E. Washington St., Norristown PA 19404. Boehringer Technologies, L.P. may be served with process at its registered office address at 500 E. Washington St., Norristown PA 19404.

II. JURISDICTION AND VENUE

8. This is an action for patent infringement arising under the federal patent laws, 35 U.S.C. § 1 *et seq.* Therefore, this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over the Defendants. Defendants regularly conduct business in this District and have committed acts of infringement within the state of North Carolina and within this judicial district.

10. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b) because the acts and transactions constituting the violations alleged herein occurred in part in this judicial district and because the Defendants transact business in this judicial district. Venue is also proper in this district under 28 U.S.C. § 1391(c) because Defendants are corporations that are subject to personal jurisdiction in this district.

III. BACKGROUND

11. KCI is a leader in the development, manufacture and distribution of specialty therapeutic medical devices.

12. Several of KCI's product lines feature products that provide wound care benefits for patients. KCI's wound care product lines include variations of the Vacuum Assisted Closure[®] System ("V.A.C.[®] System").

13. The commercialization of the V.A.C. System dramatically revolutionized wound care by providing effective treatment for difficult-to-treat and chronic wounds.

14. The V.A.C. System incorporates certain novel features and characteristics invented by researchers working on behalf of Wake Forest in Winston-Salem, North Carolina. In recognition of the technological advances made by these researchers, the U.S. Patent and Trademark Office issued U.S. Patent Nos. 7,216,651 ("the '651 patent"), 5,636,643 ("the '643 patent") 5,645,081 ("the '081 patent"), and 7,198,046 ("the '046 patent") which are assigned to Wake Forest.

15. The '651 patent, entitled "Wound Treatment Employing Reduced Pressure," was duly and lawfully issued on May 15, 2007, and is extant and enforceable until its expiration date of November 14, 2011. Wake Forest is the true and record owner of the '651 patent.

16. The '643 patent, entitled "Wound Treatment Employing Reduced Pressure," was duly and lawfully issued on June 10, 1997, and is extant and enforceable until its expiration date of June 10, 2014. Wake Forest is the true and record owner of the '643 patent.

17. The '081 patent, entitled "Method of Treating Tissue Damage and Apparatus for Same," was duly and lawfully issued on July 8, 1997, and is extant and

enforceable until its expiration date of June 10, 2014. Wake Forest is the true and record owner of the '081 patent.

18. The '046 patent, entitled "Method of Treating Tissue Damage and Apparatus for Same," was duly and lawfully issued on April 3, 2007, and is extant and enforceable until its expiration date of November 14, 2011. Wake Forest is the true and record owner of the '081 patent.

19. Kinetic Concepts, Inc. is the exclusive licensee of the '651, '643, '081 and '046 patents, by virtue of a written license agreement effective October 6, 1993 with Wake Forest. Pursuant to that license agreement, KCI has the exclusive worldwide right to make, have made, use, lease and sell products incorporating the inventions covered by the '651, '643, '081 and '046 patents. At all times relevant to this complaint, KCI has complied with the marking requirement of 35 U.S.C. § 287.

20. Boehringer packages, markets, and distributes an "Engenex Advanced NPWT System." The Engenex Advanced NPWT System (the "Engenex System") consists of dressing(s), wound cover(s), a "Tube Attachment Device," canister and "Wound-Flo Therapy Unit," all of which are packaged, marketed, and distributed by Boehringer.

21. On information and belief, Convatec is preparing to integrate Boehringer's Engenex System into its product line. On December 18, 2008, Convatec announced it signed "a long-term global exclusive license agreement with Boehringer Technologies to market and distribute Boehringer's Engenex® Negative Pressure Wound Therapy

(NPWT) system incorporating Bio-Dome™ Interface Technology.” **Exhibit A** (press release from www.convatec.com).

IV. CAUSES OF ACTION

COUNT 1: FEDERAL PATENT INFRINGEMENT

22. Paragraphs 1 through 21 are repeated and realleged as if fully set forth herein.

23. Boehringer’s Engenex System, in whole or in part, incorporates the inventions of the ’651, ’643, ’081 and ’046 patents exclusively licensed by Wake Forest to KCI. The manufacture, sale, offers for sale, importing into the U.S. and use of the Engenex System and its component parts infringes the ’651, ’643, ’081 and ’046 patent either literally or under the doctrine of equivalents.

24. Boehringer is knowingly and directly infringing or inducing infringement of the ’651, ’643, ’081 and ’046 patents, without leave or license from Plaintiffs, all to Plaintiffs’ substantial damage. Additionally, Boehringer is contributorily infringing the ’651, ’643, ’081 and ’046 patents, without leave or license from Plaintiffs, all to Plaintiffs’ substantial damage. Boehringer will continue to do so unless enjoined by this Court.

25. Said direct or contributory infringement of the ’651, ’643, ’081 and ’046 patents, or the active inducement of others to infringe the ’651, ’643, ’081 and ’046 patents, is deliberate, willful and damaging to Plaintiffs, and Plaintiffs will suffer additional and irreparable damage unless this Court enjoins Boehringer from continuing

to directly or contributorily infringe or induce others to infringe the '651, '643, '081 and '046 patents.

26. This is an exceptional case justifying the assessment of increased damages pursuant to 35 U.S.C. § 284 and the award of attorneys' fees pursuant to 35 U.S.C. § 285.

COUNT 2: DECLARATORY JUDGMENT

27. Paragraphs 1 through 26 are repeated and realleged as if fully set forth herein.

28. Plaintiffs bring this claim for declaratory judgment under both Federal Rule of Civil Procedure 57 and 28 U.S.C. §§ 2201, 2202. The matter before the Court is a case of actual controversy based on definite and concrete issues between parties of adverse legal interests. The following allegations are based on information and belief, and are likely to have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

29. Convatec has taken real and immediate steps, has engaged in meaningful preparation, and intends to make, sell, offer for sale, distribute or use the Engenex System, which infringes the '651, '643, '081 and '046 patents. Such imminent acts of Convatec have been without express or implied authorization from Plaintiffs and, if not enjoined by this Court, will deprive Plaintiffs of sales they otherwise would have made and will cause damage and irreparable injury to Plaintiffs.

30. Plaintiffs seek a declaratory judgment that Convatec's manufacture, sale, offer for sale, or use of the Engenex System, in whole or in part, constitutes an act of patent infringement.

31. Plaintiffs will suffer additional and irreparable damage unless this Court enjoins Convatec from directly or contributorily infringing or inducing others to infringe the '651, '643, '081 and '046 patents.

V. JURY DEMAND

Plaintiffs hereby request a **trial by jury**.

VI. PRAYER

For these reasons, Plaintiffs ask for judgment against Defendants for the following:

- A. Defendants, their officers, agents, servants, employees, successors, assigns and attorneys, and all persons in active concert or participation with any of them, be preliminarily and permanently enjoined from any planned or ongoing acts of infringement (whether direct, contributory, or by inducement) of U.S. Patent Nos. 7,216,651, 5,636,643, 5,645,081 and 7,198,046.
- B. Plaintiffs recover all damages they have sustained as a result of any infringement alleged herein, but not less than a reasonable royalty, together with interest and costs under 35 U.S.C. § 284.
- C. Plaintiffs be awarded increased damages under 35 U.S.C. § 284.
- D. The Court declare that this is an exceptional case pursuant to 35 U.S.C. § 285 and award Plaintiffs their reasonable attorney fees.
- E. Plaintiffs recover their costs and expenses for prosecuting this action and prejudgment and postjudgment interest.
- F. Plaintiffs recover all other relief the court deems appropriate.

Respectfully submitted,

/s/WILLIAM K. DAVIS

WILLIAM K. DAVIS (N.C. State Bar No. 1117)

BELL DAVIS & PITT, P.A.

100 N. Cherry Street, Suite 600

P.O. Box 21029

Winston-Salem, NC 27120-1029

Telephone: 336.722.3700

Fax: 336.722.8153

E-Mail: wdavis@belldavispitt.com

R. LAURENCE MACON

KIRT. S. O'NEILL

KAREN K. GULDE

AKIN GUMP STRAUSS HAUER & FELD L.L.P.

300 Convent Street, Suite 1500

San Antonio, Texas 78205

Telephone: 210.281.7000

Fax: 210.224.2035

DONALD R. DUNNER

DON O. BURLEY

FINNEGAN, HENDERSON, FARABOW,

GARRETT & DUNNER, L.L.P.

901 New York Avenue, NW

Washington, DC 20001

Telephone: 202.408.4000

Fax: 202.408.4400

ERIK R. PUKNYS
TINA E. HULSE
**FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.**
3300 Hillview Avenue
Palo Alto, CA 94304
Telephone: 650.849.6600
Fax: 650.849.6666

ATTORNEYS FOR PLAINTIFFS
KINETIC CONCEPTS, INC., KCI LICENSING, INC.,
KCI USA, INC., AND WAKE FOREST UNIVERSITY
HEALTH SCIENCES